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by virtue of the authority of this chapter." N.J.S.A. 30:11-3.1.

The Health Care Facilities Planning Act transferred this regulatory authority to the Department of Health in 1971, N.J.S.A. 26:2H-19, and the power to conduct inspections was supplemented to specifically empower the Commissioner of Health "to inquire into health care services and the operation of health care facilities and to conduct periodic inspections." N.J.S.A. 26:2H-5(a). This explicit legislative directive to conduct periodic inspections is further complemented by federal regulations which mandate an annual "compliance" inspection of facilities participating in Medicare and Medicaid programs. 20 C.F.R. § 405.1106 (1974) (Medicare); 45 C.F.R. §250.23 (3) (iii) (1974) (Medicaid). It may also be assumed that the Legislature intended to authorize the Department of Health to conduct reinspections or follow-up inspections of facilities found to be in violation of the Act, since it provides for penalties to be assessed for failure to rectify unsafe conditions or commence repairs within seven days of receiving notice of such violation. N.J.S.A. 26:2H-14.

For these reasons, it is clear that the Department is fully empowered to conduct unannounced annual, "periodic", follow-up and other forms of inspections as it shall deem necessary to assure compliance by private nursing homes and other health care facilities with the provisions of the Act and the rules and regulations of the Department of Health.

WILLIAM F. HYLAND

Attorney General

BY: THOMAS M. CURRY

Deputy Attorney General

October 1, 1975

ALAN SAGNER, *Commissioner*
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

FORMAL OPINION NO. 26-1975

Dear Commissioner Sagner:

The Department of Transportation has asked for an opinion as to whether the supervisory and regulatory authority of the Commissioner of the Department of Transportation over County Aid Programs, pursuant to chapters 13 and 14 of Title 27, may be limited to expenditures incurred by counties for labor and equipment on State aid projects, or whether it is required that all expenditures on State aid projects by the respective counties for the construction and reconstruction of county roads be subject to the standards and specifications established by the Department with respect to the design of construction, and the quality of materials, etc., used in such projects. Your concern is directed at those situations where a construction project is contemplated and where labor, equipment and administrative expenditures are in-

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curred in the performance of that project with a view of there not being any State supervision over materials and construction. For the following reasons, you are advised that all expenditures made pursuant to a County Aid Program on any construction project which requires materials are subject to approval by the Commissioner of Transportation.

N.J.S.A. 27:13-1 provides that State aid to counties shall conform with standards prescribed by the Department. It provides:

“No funds shall be expended for state aid to counties or municipalities unless the roads constructed therewith conform to standards prescribed by the department and the county or municipality shall have entered into an agreement with the department that the road will be kept in repair by patrol or such other method as shall be adopted by the commissioner.”

Moreover, it is required that the counties prepare their annual work programs in such a way that they will be developed “in cooperation and coordination with the State highway system and with each other.” N.J.S.A. 27:13-3. This provision vests in the Commissioner the right to reject a county annual work program. Additionally, those provisions of chapter 13 which deal with the reconstruction of roads damaged by construction equipment require the submission of plans and specifications to the Commissioner for approval N.J.S.A. 27:13-12, require that such work by a county or municipality shall be done under the supervision and control of the Commissioner, and require that no funds will be disbursed without his approval.

The provisions of chapter 14 of Title 27 provide solely “for the construction, reconstruction, maintenance and repair of county roads and bridges.” N.J.S.A. 27:14-1. The county is required to submit all plans, cross-sections, and specifications of the work to be performed to the Commissioner for his approval. The Commissioner’s responsibilities are then stated in N.J.S.A. 27:14-3. He is to approve or reject “plans, cross-sections and specifications” and is to be satisfied as to the “advisability” of the proposed improvement. Similar approval is needed for all bridge and culvert work accomplished under this chapter. N.J.S.A. 27:14-6. It should be noted that even after the award of such a contract by a county the Commissioner has the right to reject the contract if he deems such rejection to be in the best interest of the county. N.J.S.A. 27:14-3. The State Highway Engineer has the further responsibility of certifying that work performed under the subject contracts is in “strict conformity with the contracts, plans and specifications.” N.J.S.A. 27:14-15. Thus, the Commissioner maintains an ongoing interest in all work under this chapter. There is clearly no intent to establish a grant-in-aid type program over which the State, through the Commissioner, has no control.

The regulations which apply to the County Aid Program further emphasize the interest of the State in insuring the overall quality of the product. N.J.A.C. 16:15-2.1 provides for the county to submit to the Commissioner “detailed plans and specifications prepared by a professional engineer registered in the State of New Jersey.” Particularly, note should be taken of the requirement in this section for “detailed construction inspections.” N.J.A.C. 16:15-2.2 then provides that improvement projects should “conform to the current New Jersey Department of Transportation Standard Specifications for Road and Bridges” and to the American Association of State Highway Officials’ design criteria. This latter provision has additional requirements for projected 20-year traffic increases as well as material requirements.

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In summary, it is clear that the underlying legislative purpose for the expenditure of State aid monies under both chapters 13 and 14 of the County Aid Program is premised on full compliance with the Department of Transportation's specifications as to materials and the design of construction used in such projects. The legislative language clearly contemplates comprehensive supervision and control by the Department of Transportation of projects performed pursuant to the statutory provisions. For these reasons, it is clear that no State aid funds shall be expended for labor, administrative or other purposes on county highway projects which require construction and materials, unless the design of construction and quality of materials strictly conform to State standards and specifications approved by the Department of Transportation.

Very truly yours,

WILLIAM F. HYLAND

Attorney General

BY: MICHAEL J. FICHERA, JR.

Deputy Attorney General

September 12, 1975

ANN KLEIN, *Commissioner*
Department of Institutions and Agencies
State Office Building
Trenton, New Jersey

FORMAL OPINION NO. 27—1975

Dear Commissioner Klein:

The Division of Correction and Parole has inquired whether a correction officer who has been convicted of a crime under N.J.S.A. 2A:151-5 may legally carry a firearm when required to do so by his superior officer in the performance of his duties. It has been indicated that in certain instances the carrying of a firearm by a correction officer may be part of assigned job responsibilities. This circumstance is most prevalent for correction officers assigned to the towers at the State Prison and officers who accompany inmates to various court proceedings throughout the State.

In order to place the issue in the proper perspective, a discussion of the pertinent statutes bearing on the right of certain convicted felons to carry a firearm is necessary. N.J.S.A. 2A:151-8 provides that any person having been convicted of a crime enumerated in N.J.S.A. 2A:151-5 when armed with or having in his possession a firearm shall be guilty of a misdemeanor. The crimes for which conviction precludes the use or possession of a firearm include assault, robbery, larceny, burglary or breaking and entering whether or not armed with or having possession of a firearm.

N.J.S.A. 2A:151-43(h) excepts from the criminal proscription of carrying a concealed weapon under N.J.S.A. 2A:151-41 "any person or jail warden or their deputies, or any guard or keeper of any penal institution in this State, while engaged in the